

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 733 OF 2003

Nasreen Bano d/o Abdul Kadir ... Appellant

V/s

The State of Maharashtra ... Respondent

Mr. Sachin Dhakephalkar with P.K. Dhakephalkar for the appellant.

Mrs. S.D. Shinde, A.P.P. for the respondent.

**CORAM: V.G. PALSHIKAR &
SMT. NISHITA MHATRE, JJ.**

DATED: 16TH NOVEMBER, 2006.

ORAL JUDGMENT (PER SMT. NISHITA MHATRE, J.):

1. The accused has been convicted under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and payment of fine. The allegation against the accused was that on 2.2.2001 she murdered her brother's wife Jamila Bano by setting her ablaze. According to the prosecution, Jamila Bano was admitted to the hospital after she was burnt. On admission she reported the history of the burns sustained by her. A dying declaration was also recorded implicating the accused. Besides this, an oral

statement was made by the victim to a news-paper reporter contending that she was set ablaze by her sister-in-law. The accused was arrested five days after the incident.

2. The prosecution has relied upon the deposition of 6 witnesses in order to bring home its case against the accused. The most relevant piece of evidence is the dying declaration which is at Exh.32. This declaration was recorded by PW-5, the Assistant Police Inspector who claims to have taken all the necessary precautions of ascertaining whether the victim was in a position to make a statement. In this dying declaration, the victim has stated that, in the afternoon of 2.2.2001, between 2.00 and 2.30 p.m., her mother-in-law and sister-in-law were in the house with her. A quarrel erupted between her and her sister-in-law over a cake of soap on the previous day. The victim has stated that the conflict spilled over to the next day when the accused quarrelled with her again on 2.2.2001, poured kerosene on her and set her ablaze with a lighted matchstick. The victim claims to have shouted for help. She then states that several people from the locality came to her rescue and extinguished the flames. She has then stated that her parents-in-law admitted her to the hospital. Besides this, the prosecution has also produced at Exh.23 the

case papers from the hospital where the victim was admitted. According to the prosecution, this document corroborates the dying declaration. A perusal of this document, however, does not support this submission made on behalf of the prosecution. This document reveals that the homicidal burns have been caused by the sister-in-law and mother-in-law of the victim.

4. The prosecution has also relied upon the oral dying declaration made by the victim to the PW-1 who is a news-paper reporter. This witness states that the victim told him that she was burnt by her sister-in-law Nasreen Bano. However, the statement made by the victim to this witness is not admissible at all. He has no connection or any relationship with the victim and is merely a chance witness. His deposition, therefore, has no evidentiary value and has to be discarded.

5. PW-2 and PW-3 are the medical officers examined in this case. PW-2 treated the victim when she was admitted to the hospital on 2.2.2001 with 96% burn injuries. According to this witness, the dying declaration was recorded by the police officer after he had assured him that the mental condition of the patient was stable. This witness has endorsed the dying declaration with the words, "Pt. cons. to express her

DD." This endorsement does not disclose the mental state of the patient when the dying declaration was recorded. The dying declaration has been recorded at 3.30 p.m. while the patient was admitted at 3.00 p.m. with 96% burn injuries. There is no evidence on record to indicate that the victim's condition had improved within half an hour of admission. The doctor i.e. PW-2 states that, after recording this statement he had endorsed a letter issued to the Special Executive Magistrate for recording the statement of the victim and that the victim was semi-conscious and not in a position to have a statement recorded. The doctor has agreed that the condition of health of the patient was very poor when the police officer recorded the statement. Therefore, in our opinion, this dying declaration cannot be accepted. The mental state of the victim has not been expressed by the doctor while endorsing the statement either before the statement was recorded after completion of the recording. In such circumstances, it is difficult to believe that the patient who has suffered 96% burn injuries would be in a condition to make any statement regarding the cause of the burns sustained by her. Besides this, when she was admitted to the hospital, the case papers show that the burn injuries were caused not only by the accused but also by the victim's mother-in-law. However, in the statement

recorded by the police officer, there is no allegation at all against the mother-in-law. In fact, the victim states that her mother-in-law alongwith father-in-law admitted her to the hospital.

6. PW-5 is the police officer who has recorded the dying declaration. He has stated that he recorded the statement after taking all necessary precautions and obtaining an endorsement from PW-2 regarding the mental fitness of the victim. This witness has also issued a letter to the Special Executive Magistrate for recording the dying declaration. However, in the meantime, the witness recorded it on his own and the Special Executive Magistrate was not able to record any statement as the doctor certified that the victim was not in a position to talk.

7. PW-3, the medical officer who performed the post-mortem examination has stated that the victim had sustained 96% thermal burns and that the age of the injuries was within 24 hours. The post-mortem was conducted at 8.30 a.m. on 3.2.2001.

8. The panch witness who has been examined as PW-4 has spoken about the recovery of a stove, match-box and plastic kerosene can from the spot where the incident

had occurred. This panchnama was prepared by PW-5.

9. The last witness examined by the prosecution is the police officer who arrested the accused and sent the articles seized for chemical analysis.

10. On a consideration of the spot panchnama and seizure panchnama, the articles seized are those which would be found in any residence. The mere seizure of these articles would not necessarily connect the accused to the death of the victim. In fact, there is no evidence on record that the death of the victim was a homicidal death. Neither of the doctors examined as PW-2 and PW-3 have stated that the death was homicidal. In such circumstances, it is difficult to connect the accused to the crime. There is no explanation from the prosecution as to why if the victim had named her mother-in-law as well as the sister-in-law as the perpetrators of the crime, the former was not arrested and arraigned. In the face of the contradiction in the dying declaration and the history of burns given at the hospital by the patient, it is difficult to sustain the conviction.

11. Hence, the appeal allowed. The accused to be set free, if not otherwise required.

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